COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00159-CV

MEDICAL CENTER OF ARLINGTON — APPELLANT

V.

KIMBERLY DAVIS — APPELLEE

FROM THE 67TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 067-278605-15

MEMORANDUM OPINION[1]

In a single issue, Appellant Medical Center of Arlington (MCA) appeals from the trial court's order denying its motion to dismiss Appellee Kimberly Davis's claim, arguing that her claim is a health care liability claim for which she failed to submit an expert report under the Texas Medical Liability Act (TMLA).

[1]*See* Tex. R. App. P. 47.4.

See Tex. Civ. Prac. & Rem. Code Ann. §§ 74.001–.507 (West 2011 & Supp. 2016). We affirm.

Background

Davis was employed as a contract obstetrical nurse in the labor and delivery department at MCA. On June 25, 2014, she assisted in the delivery of an infant. While she was in the patient's room, the housekeeping staff came in and began cleaning the floor of the patient's "blood and other stuff." Davis left the room when the housekeeping staff came in. As she was returning to the patient's room fifteen to twenty minutes later, she slipped on water in the hallway, hit her left shoulder on the door frame, and sustained injuries.

Davis sued MCA. In her suit, Davis alleged negligence theories related to workplace safety, as well as premises defects and general negligence. MCA filed a motion to dismiss based on Davis's failure to provide an expert report under Texas Civil Practice and Remedies Code section 74.351. *See id.* § 74.351(b). The trial court denied MCA's motion, and this interlocutory appeal followed.

Discussion

The TMLA defines a "health care liability claim" as a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care,

which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract. *Id.* § 74.001(a)(13).

The question presented in this case is whether Davis's claim for injuries she sustained outside of a patient's room in the hallway of a business that qualifies as a healthcare provider is a "health care liability claim" under the TMLA. Specifically, the issue is whether the record demonstrates a substantive relationship between the safety standards that Davis alleges the hospital breached and the provision of health care. The Texas Supreme Court has held that safety claims such as Davis's need not be "directly related to the provision of health care" in order to fall under the TMLA. *See Tex. W. Oaks Hosp., LP v. Williams*, 371 S.W.3d 171, 186 (Tex. 2012). It has, however, set forth several nonexclusive factors for courts to consider in analyzing whether a "substantive nexus" exists between the safety standards allegedly violated and the provision of health care. *Reddic v. E. Tex. Med. Ctr.*, 474 S.W.3d 672, 673 (Tex. 2015) (*quoting Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 504 (Tex. 2015)).

MCA argues that the TMLA applies to this case because Davis's claims concern an alleged departure from accepted standards of safety and that this premises liability lawsuit is covered under the umbrella of the term "safety" in the "health care liability claim" definition.

Davis counters that to be covered by that definition, her claim must be at least indirectly related to health care and that it is not. If MCA is correct, Davis's claim is subject to dismissal under the TMLA for failure to submit an expert

report. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(a), (b)(2). If Davis is correct, no expert report is needed, and no dismissal is warranted. Whether Davis's claim falls under the TMLA is a statutory construction issue that we review de novo. *See Tex. W. Oaks Hosp.*, 371 S.W.3d at 177.

Texas West Oaks Hospital, relied on by MCA in support of its motion, does not fully dispose of this question. *See id.* at 179–80, 183–86, 192–93. Instead, *Texas West Oaks Hospital*, which involved a health care employee's claim against his mental health facility employer for injuries arising out of inadequate training, supervision, risk-mitigation, and safety, stands for the propositions that (1) the TMLA "does not require that the claimant be a patient of the health care provider for his claims to fall under the Act" and (2) "the safety component of [health care liability claims] need not be directly related to the provision of health care." *Id*. at 174, 186.

The circumstances presented in that case were intrinsically tied to health care—Williams was a professional caregiver injured on the job while supervising a patient suffering from paranoid schizophrenia. *Id*. at 175. The patient injured Williams when he took the patient to a smoking area in violation of the hospital's policy that a patient on "unit restriction" not be removed from the psychiatric unit without a physician's direct order. *Id*. The supreme court stated that the focus in determining whether Williams's claims fell under the TMLA was not the claimant's status but the gravamen of the claims against the health care provider:

Can the relevant allegations properly be characterized as health care liability claims under the TMLA? *See id*. at 178, 179.

Since *Texas West Oaks Hospital* was decided, the supreme court has set forth a non-exclusive set of factors for courts to consider in deciding whether a particular safety standards claim is a health care liability claim. *Ross*, 462 S.W.3d at 505. In *Ross*, the supreme court concluded that a safety standards-based claim against a health care provider is a health care liability claim only if a "substantive nexus" exists between the "safety standards allegedly violated and the provision of health care." *Id*. at 504. In so holding, the court examined the following factors:

> 1. Did the alleged negligence of the defendant occur in the course of the defendant's performing tasks with the purpose of protecting patients from harm;
>
> 2. Did the injuries occur in a place where patients might be during the time they were receiving care, so that the obligation of the provider to protect persons who require special, medical care was implicated;
>
> 3. At the time of the injury was the claimant in the process of seeking or receiving health care;
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> 4. At the time of the injury was the claimant providing or assisting in providing health care;
>
> 5. Is the alleged negligence based on safety standards arising from professional duties owed by the health care provider;
>
> 6. If an instrumentality was involved in the defendant's alleged negligence, was it a type used in providing health care; or
>
> 7. Did the alleged negligence occur in the course of the defendant's taking action or failing to take action necessary to comply with

> safety-related requirements set for health care providers by governmental or accrediting agencies?

Id. at 505.

In *Ross*, the court concluded that under the record in that case, the answer to each of the considerations was "no," and thus Ross's claim was based on safety standards that had no substantive relationship to the provision of health care and was not a health care liability claim. *Id.*

Thereafter, in *Reddic*, the court clarified that not all safety standards-based claims that arise in a hospital setting are health care liability claims. 474 S.W.3d at 674–75. In that case, a visitor to the hospital slipped and fell on a floor mat between the main entrance and the lobby. *Id.* at 672–73. She filed suit against the hospital on a premises liability theory. *Id.* at 673. In affirming the trial court's denial of the hospital's motion to dismiss for failure to file an expert report, the supreme court observed that the record did not reflect that the safety standards in question were related to the provision of health care by anything more than the location of Reddic's fall being inside a hospital. *Id.* at 676. The court held that, therefore, the maintenance of the floor and mats where the fall occurred was not "substantively related to the safety of patients receiving health care or persons seeking health care." *Id.*

Applying the considerations set out in *Ross* to this case, as well as the court's reasoning in *Reddic*, we hold that the record reflects that the answer to the majority of the factors set out in *Ross* is "no." When she fell in the hallway,

Davis was not seeking or receiving health care and was not at that time providing or assisting in the provision of health care. *Cf. E. Tex. Med. Ctr. Gilmer v. Porter*, 485 S.W.3d 127, 131 (Tex. App.—Tyler 2016, no pet.) (holding that while the plaintiff was seeking healthcare from the defendant hospital when she slipped and fell, she was not yet a patient when she fell and was not being treated, and the injury did not occur in an area where patients might be receiving care). Even if we assume that because Davis was on her way to a patient's room, she was treating a patient when she fell, the remainder of the *Ross* factors go against MCA.

Specifically, the record here reflects that Davis had left the patient care area, and MCA directs us to no evidence in the record that the standing water on the floor in the hallway where Davis fell occurred in the course of the hospital's protecting patients from harm.[2] Likewise, Davis was injured in the hallway, and there was no evidence that the hallway was a place where patients might be while seeking or receiving care, thereby implicating MCA's obligation to protect persons who require special, medical care. *See Galvan v. Mem'l Hermann Hosp. Sys.*, 476 S.W.3d 429, 431 (Tex. 2015) (rejecting the defendant hospital's argument that the plaintiff, a visitor at the hospital, fell in an area where patients might be when they are receiving care because the "injury occurred in a hallway

[2]MCA asserts, without directing us to support in the record, that the water was on the floor as a result of its cleaning the floors of the patient's room for safety reasons. But it also asserts that under the record, any allegation of how the water came to be on the floor is mere speculation.

and patients must regularly traverse the hallways on their way to hospital destinations," and stating that "nothing in the record supports the hospital's contention that patients regularly—or even occasionally—traversed the area where [the visitor] fell, regardless of whether it was in the main lobby or a hallway"); *Lout v. The Methodist Hosp.*, 469 S.W.3d 615, 618 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (holding that, although the plaintiff alleged that she slipped and fell while visiting a patient in the "heart failure unit" at the defendant hospital, there was no evidence that the plaintiff fell in an area where patients might be during their treatment and no evidence that the entirety of the heart failure unit was such a place); *Williams v. Riverside Gen. Hosp., Inc.*, No. 01-13-00335-CV, 2014 WL 4259889, at *7 (Tex. App.—Houston [1st Dist.] Aug. 28, 2014, no pet.) (mem. op.) (holding that no expert report was required for nurse's claim that she slipped and fell due to a leakage from lab equipment on the hospital's floor).

Furthermore, the safety standards that MCA is alleged to have violated here arise not from a violation of its professional duties as a health care provider but instead appear to be no different from those in any other premises liability case. There was no evidence that an instrumentality of a type used in providing health care was involved in MCA's negligence or that the alleged negligence occurred in the course of MCA's taking action or failing to take action necessary to comply with safety-related requirements. *See Lance Thai Tran, DDS, PA v. Chavez*, No. 14-14-00318-CV, 2015 WL 2342564, at *4 (Tex. App.—Houston

[14th Dist.] May 14, 2015, no pet.) (mem. op.) (weighing the *Ross* factors in a negligence case brought against a dental clinic by an employee of the clinic after the employee slipped and fell in mop water on the floor and stating that the record did not show that the mop was of a type particularly used in providing health care to patients).

Conclusion

We conclude that the record before us does not reflect a sufficient connection between the safety standards that Davis claims MCA violated and its provision of health care. *See Ross*, 462 S.W.3d at 504. Therefore, we reject MCA's position that Davis's claim is a health care liability claim. Accordingly, we affirm the trial court's order denying MCA's motion to dismiss.

/s/ Charles Bleil
CHARLES BLEIL
JUSTICE

PANEL: LIVINGSTON, C.J.; WALKER, J.; and CHARLES BLEIL (Senior Justice, Retired, Sitting by Assignment).

DELIVERED: January 19, 2017